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SENATE

{ REPORT
105-360

LEAKING UNDERGROUND STORAGE TANK TRUST FUND AMENDMENTS ACT OF 1998

OCTOBER 1 (legislative day, SEPTEMBER 29), 1998.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[To accompany S. 555]

The Committee on Environment and Public Works, to which was referred a bill (S. 555) to amend the Solid Waste Disposal Act to require that at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund be distributed to States to carry out cooperative agreements for undertaking corrective action and for enforcement of subtitle I of that Act, having considered the same, reports favorably thereon with amendments, and an amendment to the title, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND OBJECTIVES OF THE LEGISLATION

The Environmental Protection Agency (EPA) estimates that there are currently over 909,000 active underground storage tanks (USTs) containing petroleum products. Many of these tanks have leaks, causing potential harm to human health and the environment. Since 1984, underground storage tanks have been regulated under Subtitle I of the Solid Waste Disposal Act, with the States largely taking the lead in implementing and enforcing the program requirements, including corrective action requirements. States receive Federal funds from the Leaking Underground Storage Tank Trust Fund to carry out the requirements.

S. 555 strengthens the existing statutory framework for underground storage tanks. The bill amends Subtitle I to require that EPA distribute at least 80 percent (amended from the 85 percent requirement in the bill as introduced) of its annual appropriation

from the Leaking Underground Storage Tank Trust Fund to States under cooperative agreements. The bill also gives States greater flexibility to use the funds for enforcement of the program; administrative costs; and corrective action and compensation programs. Finally, the bill affirms that EPA may use funds from the Trust Fund for enforcement of the UST program.

Background

In 1984, Congress enacted as Subtitle I of the Solid Waste Disposal Act a comprehensive program to address the problem of leaking underground storage tanks. Among other things, the program required EPA to develop leak detection and prevention standards for USTs, and additionally authorized the Agency to compel tank owners and operators to take corrective action to clean up leaking tanks or to close them. Under this program, owners and operators of existing underground storage tank systems (i.e., those systems for which installation commenced on or before December 22, 1988), had 10 years to December 22, 1998, to upgrade, replace, or close tanks and undertake any necessary corrective action.

Over a million USTs have been closed under this program, but corrective action is still needed at over 166,000 that have been identified by the States as having leaks for which cleanup is not completed. The number of USTs that will require corrective action is expected to increase as owners and operators continue to identify and upgrade existing tanks to comply with the 1998 deadline. EPA estimates that over the next 3 years, releases will be detected at an additional 55,000 USTs.

In 1986, to help implement the program, Congress created the Leaking Underground Storage Tank (LUST) Trust Fund, which is paid for by a one-tenth of one cent tax on all petroleum products. Amounts are appropriated each year from the Trust Fund for the States and EPA to enforce the UST corrective action requirements; to conduct cleanups in certain limited situations where there is no financially viable responsible party or where a responsible party fails to undertake the appropriate corrective action; to take corrective action in cases of emergency; and to bring cost recovery actions against parties who fail to comply with the requirements of Subtitle I. The balance of the Trust Fund is approximately \$1.5 billion. The annual appropriation for fiscal year 1999 is expected to be approximately \$75 million.

In addition to the Federal LUST Trust Fund, many States have also established funds, capitalized through State gas taxes, fees, and other mechanisms, to pay for cleanups and to provide assistance to tank owners in complying with other requirements. States spend approximately \$1 billion per year from their trust funds. However, in recent years, the claims against those funds have risen dramatically and are expected to increase even more due to 1998 requirements. As result nationwide, annual claims are expected to exceed payments into the State funds by more than \$100 million.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 sets forth the short title of this bill as the “Leaking Underground Storage Tank Trust Fund Amendments Act of 1998.”

Sec. 2. Leaking Underground Storage Tanks

Section 2 adds a new subsection (f) to Section 9004 of the Solid Waste Disposal Act to give States greater flexibility to implement the underground storage tank program. First, the new subsection (f)(1) provides that EPA must distribute to the States at least 80 percent of the funds appropriated each year from the Leaking Underground Storage Tank Trust Fund. The States may use these funds to pay for the reasonable costs of: (1) actions to carry out and enforce corrective actions; (2) necessary administrative costs of State assurance funds; (3) enforcement of a State program; (4) State or local corrective actions; and (5) corrective action or compensation programs under a State program if there is no financially viable owner or operator of an UST.

The bill, as amended by the committee, guarantees that States will receive a minimum of 80 percent of the annual appropriation from the LUST Trust Fund. This is intended to be a floor; the actual percentage distributed to the States in any given year may exceed that level. Historically, EPA has distributed varying amounts to the States, ranging from as little as 81 percent of the annual appropriation to as much as 89 percent. The average distribution has been in the range of 85 percent. Based on that average, the bill, as introduced, provided that States would receive at least 85 percent of the annual appropriation. That percentage was lowered, in part, to provide EPA with greater flexibility to address the problems associated with USTs within the exterior boundaries of Indian reservations or other areas within Tribal jurisdiction (hereinafter referred to as “Tribal jurisdiction”). EPA is expected to distribute more than the statutory minimum of 80 percent of the LUST funds if the Agency’s budgetary needs, including for implementation of the LUST program with respect to tanks within Tribal jurisdiction, are less than 20 percent of allocated funds.

This new subsection also expands upon the authority that is currently provided under Section 9003(h)(7). Under new subsection (f)(1)(A)(iii), States may use funds to enforce State or local tank leak detection, prevention and other requirements through State or local programs. State agencies currently receive funding from EPA from sources other than the LUST Trust Fund to undertake enforcement activities for leak detection and other preventive requirements. It is expected that States will continue to receive funding from EPA from these other sources, as well as from the LUST Trust Fund, for these activities. Any LUST Trust Fund appropriations used for enforcement activities by States should supplement funds that the States have been receiving, and will continue to receive, through grants authorized under Section 2007(f).

New subsection (f)(1)(A)(v) authorizes a State to make the determination of whether an owner or operator of an underground storage tank is financially viable (i.e., whether the owner or operator has sufficient resources to pay for a corrective action without sig-

nificantly impairing the ability of the owner or operator to continue in business), in accordance with guidelines to be developed by EPA and the States. Until such guidelines are developed, States should use, to the extent appropriate, financial information used in EPA's existing ABEL and INDIPAY models to evaluate the ability of an owner or operator to pay for the costs of corrective action. In making the determination of whether an owner or operator has the ability to pay, the State must take into consideration any funding received from the State. LUST Fund dollars may be used to supplement State dollars, in appropriate cases.

In addition to expanding the uses of the Trust Fund, this section reaffirms that States may not use these funds to provide financial assistance to owners and operators of tanks to comply with existing regulations governing USTs, including the requirements for upgrading of existing tanks.

While the bill allows for several new uses of the LUST Trust Fund, the legislation does not prioritize among uses. Funding for existing uses (including enforcement of corrective action requirements, corrective actions taken by State and local governments at responsible party sites, and cost recovery actions) most effectively serves the needs for protection of human health and the environment. There will be a significant funding need in coming years for enforcement of the tank leak detection and prevention requirements through State and local programs. The distribution of available Federal funding should recognize the importance of enforcement to protection of human health and the environment.

Section 2 further directs EPA, in coordination with Indian Tribes, to develop and implement a strategy to undertake the necessary corrective actions and to implement and enforce other requirements in connection with USTs within Tribal jurisdiction. Within 2 years of the date of enactment of S. 555, and every 2 years after that, EPA is to submit to Congress a report on the progress of the Agency in implementing the UST program with respect to tanks within Tribal jurisdiction.

According to EPA, implementation of the leaking underground storage tank program with respect to tanks within Tribal jurisdiction has presented a number of unique challenges. The large number of Indian Tribes and their geographic diversity can make implementation difficult. In addition, unlike most States, which have established separate State cleanup funds that contribute to the cleanup of releases from underground storage tanks, Indian Tribes generally have not established cleanup funds to offset remediation costs.

As a result of these and other factors, inventories of leaking underground storage tanks and implementation of corrective measures in connection with tanks within Tribal jurisdiction have not progressed sufficiently. As the December 22, 1998 deadline approaches, EPA expects the number of reported releases from these tanks to increase, perhaps substantially. As a result, the Agency anticipates a significant increase in the number of site assessments and necessary corrective actions in connection with tanks within Tribal jurisdiction. Where there is no viable owner or operator to pay for a cleanup, or a site otherwise meets the criteria for funding from the Federal LUST Trust Fund, these activities may be funded

through that Fund. This bill is intended to promote the timely and effective response to contamination from leaking underground storage tanks within Tribal jurisdiction.

Subsection (f)(2) sets forth the process to be used to allocate funds among States. In general, EPA is directed to distribute funds in accordance with the existing allocation process developed by the Agency. The process may be revised only after consulting with the States. Any revisions must take into consideration a number of factors, including: the total revenue contributed by a State to the Trust Fund; the number of confirmed releases; the number of USTs in a State; groundwater use in a State; program performance in a State; the financial needs of a State; and the ability of a State to use its allocated funds in any given year. According to EPA, the current allocation process takes into consideration these factors. Any revisions to the current allocation process should maintain an inclusive process for EPA consultation with States and ensure that EPA obtains necessary information from States.

Subsection (f)(3) requires distributions from the Trust Fund to be made directly to the State agency that enters into a cooperative agreement with EPA. Each State shall limit the proportion of the funds that may be used for administrative costs in accordance with its State law.

The intent of this provision is to limit administrative expenses to a percentage that is otherwise allowed under State law. It should not be interpreted, however, to impose a cap on State costs of overseeing corrective action. Some States use LUST Trust Funds to cover the costs of oversight of corrective actions that are conducted by responsible parties. This is a very effective use of the funds. Although some States characterize this type of oversight as an administrative expense, this provision is not intended to be interpreted to include this kind of oversight cost as an administrative expense.

Subsection (f)(5) expressly authorizes EPA to use LUST Trust Funds to enforce tank leak detection, prevention and other requirements. With the December 22, 1998 deadline approaching, it is expected that EPA will need to devote resources to Federal oversight and enforcement of the UST program in some circumstances. Therefore, this provision authorizes the use of LUST Trust Fund dollars by EPA to supplement the role of the States in enforcing the UST program. States will continue to have the primary responsibility for implementation and enforcement of the UST program and its regulations. EPA is expected to target the funds received from the LUST Trust Fund to activities in States that do not have, or are not adequately enforcing, their own programs, and to implement the UST program, including corrective actions, with respect to tanks within Tribal jurisdiction.

This provision does not affect EPA's authority to use other funds to enforce the UST program. EPA receives funding from sources other than the LUST Trust Fund to undertake enforcement activities for leak detection and other preventive requirements. Any LUST Trust Fund appropriations used for such enforcement activities by EPA are expected to supplement funds that the Agency has been, and will be, receiving from sources other than the LUST Trust Fund.

Sec. 3. Addition to Trust Fund Purposes

Section 3 amends Section 9508(c)(1) of the Internal Revenue Code to authorize the use of the LUST Trust Fund for the expanded purposes identified in this bill.

Sec. 4. Study

Section 4 directs EPA to conduct a study to determine whether the gasoline additive methyl tertiary butyl ether (MTBE) has a corrosive effect on underground storage tanks.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 555 would impose no Federal intergovernmental unfunded mandates on State, local, or Tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

LEGISLATIVE HISTORY

S. 555 was introduced on April 10, 1997, by Senator Allard. No hearings were held on this bill. On Wednesday, September 23, 1998, the Committee on Environment and Public Works held a business meeting to consider this bill. Senator Baucus offered an amendment on behalf of Senator Boxer to require EPA to conduct a study. The Boxer amendment was adopted by voice vote. Senator Chafee offered a Manager's amendment in the nature of a substitute on behalf of himself and Senators Baucus, Smith, and Allard. The Manager's amendment was amended by a technical amendment, adopted by voice vote, and the bill as amended was ordered reported. No rollcall votes occurred on the bill.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 555, the Leaking Underground Storage Tank Trust Fund Amendments Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for Federal costs), who can be reached at 226-2860, and Pepper Santalucia (for the State and local impact), who can be reached at 225-3220.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 555, Leaking Underground Storage Tank Trust Fund Amendments Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on September 23, 1998.

Summary

S. 555 would direct the Environmental Protection Agency (EPA) to distribute to States at least 80 percent of the money appropriated to the agency from the Leaking Underground Storage Tank (LUST) Trust Fund each fiscal year. The bill also would allow two new uses for Federal funds appropriated from the LUST fund, which could lead to a significant increase in discretionary spending. CBO has no basis for predicting whether or to what extent the Congress might increase appropriations to accommodate the possible new uses of balances in the LUST fund.

Enacting S. 555 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

Estimated Cost to the Federal Government

Under this bill, States could use LUST grant money to help fund State programs that pay for the cost of cleaning up leaks from regulated underground storage tanks or to compensate tank owners for the cost of conducting such cleanups. States also would be authorized to use Federal funds to enforce Federal standards for preventing leaks from underground storage tanks. Because the gap between existing resources and State cleanup needs is large, there could be significant demand for Federal assistance under this bill.

In 1998, \$65 million was appropriated from the LUST fund for EPA's administration and oversight of the program, and for funding cooperative agreements with State LUST programs. Under these cooperative agreements, most funds are spent on oversight of cleanups conducted by private parties, although some funds may be used to finance cleanups directly when no financially viable private party exists. Most States operate State assurance funds, separate from the Federal LUST program, to conduct cleanups and to reimburse owners and operators of underground tanks for cleanup costs. The most recent data collected by the States indicates that

annual receipts to State assurance funds are about \$1.2 billion, and current balances in these funds amount to about \$1.3 billion. The assurance funds face outstanding claims of \$2.8 billion from tank owners and operators seeking compensation for cleanups already conducted. According to EPA, the average cleanup under the LUST program costs \$125,000 and there are over 170,000 underground tanks currently undergoing or awaiting cleanup over the next decade. Thus, current cleanup needs may exceed \$20 billion, and the demand for additional monies from the Federal LUST fund could total hundreds of millions of dollars annually for many years.

Pay-as-You-Go Considerations: None.

Estimated Impact on State, Local, and Tribal Governments

The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. By requiring EPA to distribute to the States at least 80 percent of the money appropriated to the agency from the LUST fund each year, the bill would assure States of a specified minimum proportion of available funds. (According to EPA, the percentage of the annual appropriated amounts that States have received since 1989 has ranged from 81 percent to 89 percent). As described above, the bill would also grant States more flexibility in using those funds.

Estimated Impact on the Private Sector

This bill would impose no new private-sector mandates as defined in UMRA.

Estimated Prepared by: Federal Costs: Kim Cawley (226–2860); Impact on State, Local, and Tribal Governments: Pepper Santalucia (225–3220).

Estimate Approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

SOLID WASTE DISPOSAL ACT

[As Amended Through P.L. 104–186, August 20, 1996]

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”:

Subtitle A—General Provisions

- Sec. 1001. Short title and table of contents.
- Sec. 1002. Congressional findings.
- Sec. 1003. Objectives.
- Sec. 1004. Definitions.
- Sec. 1005. Governmental cooperation.
- Sec. 1006. Application of Act and integration with other Acts.
- Sec. 1007. Financial disclosure.
- Sec. 1008. Solid waste management information and guidelines.

Subtitle B—Office of Solid Waste; Authorities of the Administrator

- Sec. 2001. Office of Solid Waste and Interagency Coordinating Committee.
- Sec. 2002. Authorities of Administrator.
- Sec. 2003. Resource recovery and conservation panels.
- Sec. 2004. Grants for discarded tire disposal.
- Sec. 2005. Labeling of certain oil.
- Sec. 2006. Annual report.
- Sec. 2007. General authorization.
- Sec. 2008. Office of Ombudsman.

Subtitle C—Hazardous Waste Management

- Sec. 3001. Identification and listing of hazardous waste.
- Sec. 3002. Standards applicable to generators of hazardous waste.
- Sec. 3003. Standards applicable to transporters of hazardous waste.
- Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
- Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
- Sec. 3006. Authorized State hazardous waste programs.
- Sec. 3007. Inspections.
- Sec. 3008. Federal enforcement.
- Sec. 3009. Retention of State authority.
- Sec. 3010. Effective date.
- Sec. 3011. Authorization of assistance to States.
- Sec. 3012. Hazardous waste site inventory.
- Sec. 3013. Monitoring, analysis, and testing.
- Sec. 3014. Restrictions on recycled oil.
- Sec. 3015. Expansion during interim status.
- Sec. 3016. Inventory of Federal Agency hazardous waste facilities.
- Sec. 3017. Export of hazardous waste.
- Sec. 3018. Domestic sewage.
- Sec. 3019. Exposure information and health assessments.
- Sec. 3020. Interim control of hazardous waste injection.
- Sec. 3021. Mixed waste inventory reports and plan.
- Sec. 3022. Public vessels.
- Sec. 3023. Federally owned treatment works.

Subtitle D—State or Regional Solid Waste Plans

- Sec. 4001. Objectives of subtitle.
- Sec. 4002. Federal guidelines for plans.
- Sec. 4003. Minimum requirements for approval of plans.
- Sec. 4004. Criteria for sanitary landfills; sanitary landfills required for all disposal.
- Sec. 4005. Upgrading of open dumps.
- Sec. 4006. Procedure for development and implementation of State plan.
- Sec. 4007. Approval of State plan; Federal assistance.
- Sec. 4008. Federal assistance.
- Sec. 4009. Rural communities assistance.
- Sec. 4010. Adequacy of certain guidelines and criteria.

Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

- Sec. 5001. Functions.
- Sec. 5002. Development of specifications for secondary materials.
- Sec. 5003. Development of market for recovered materials.
- Sec. 5004. Technology promotion.
- Sec. 5005. Nondiscrimination requirement.
- Sec. 5006. Authorization of appropriations.

Subtitle F—Federal Responsibilities

- Sec. 6001. Application of Federal, State, and local law to Federal facilities.
- Sec. 6002. Federal procurement.
- Sec. 6002A. Preference for recycled toner cartridges.¹
- Sec. 6003. Cooperation with Environmental Protection Agency.
- Sec. 6004. Applicability of solid waste disposal guidelines to executive agencies.

Subtitle G—Miscellaneous Provisions

- Sec. 7001. Employee protection.
- Sec. 7002. Citizen suits.
- Sec. 7003. Imminent hazard.
- Sec. 7004. Petition for regulations; public participation.
- Sec. 7005. Separability.
- Sec. 7006. Judicial review.
- Sec. 7007. Grants or contracts for training projects.
- Sec. 7008. Payments.
- Sec. 7009. Labor standards.
- Sec. 7010. Law enforcement authority.

Subtitle H—Research, Development, Demonstration, and Information

- Sec. 8001. Research, demonstrations, training, and other activities.
- Sec. 8002. Special studies; plans for research, development, and demonstrations.
- Sec. 8003. Coordination, collection, and dissemination of information.
- Sec. 8004. Full-scale demonstration facilities.
- Sec. 8005. Special study and demonstration projects on recovery of useful energy and materials.
- Sec. 8006. Grants for resource recovery systems and improved solid waste disposal facilities.
- Sec. 8007. Authorization of appropriations.

Subtitle I—Regulation of Underground Storage Tanks

- Sec. 9001. Definitions.
- Sec. 9002. Notification.
- Sec. 9003. Release detection, prevention, and correction regulations.
- Sec. 9004. Approval of State programs.
- Sec. 9005. Inspections, monitoring, and testing.
- Sec. 9006. Federal enforcement.
- Sec. 9007. Federal facilities.
- Sec. 9008. State authority.
- Sec. 9009. Study of underground storage tanks.
- Sec. 9010. Authorization of appropriations.

Subtitle J—Demonstration Medical Waste Tracking Program

- Sec. 11001. Scope of demonstration program for medical waste.
- Sec. 11002. Listing of medical wastes.
- Sec. 11003. Tracking of medical waste.
- Sec. 11004. Inspections.
- Sec. 11005. Enforcement.
- Sec. 11006. Federal facilities.
- Sec. 11007. Relationship to State law.
- Sec. 11008. Report to Congress.
- Sec. 11009. Health impact report.
- Sec. 11010. General provisions.
- Sec. 11011. Effective date.
- Sec. 11012. Authorization of appropriations.

CONGRESSIONAL FINDINGS

SEC. 1002. (a) SOLID WASTE.—The Congress finds with respect to solid waste—

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¹ Editorially supplied.

Subtitle I—Regulation of Underground Storage Tanks

DEFINITIONS AND EXEMPTIONS

SEC. 9001. For the purposes of this subtitle—

* * * * *

(1) * * *

* * * * *

(3) The term “owner” means—

(A) in the case of an underground storage tank in use on the date of enactment of the Hazardous and Solid Waste Amendments of 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated [substances] *substances*, and

* * * * *

RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003. (a) * * *

* * * * *

(f) EFFECTIVE DATES.—(1) Regulations issued pursuant to [subsection] *subsections* (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 9001(2)(B) (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.

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APPROVAL OF STATE PROGRAMS

SEC. 9004. (a) ELEMENTS OF STATE PROGRAM.—

* * * * *

(f) TRUST FUND DISTRIBUTION.—

(1) IN GENERAL.—

(A) AMOUNT AND PERMITTED USE OF DISTRIBUTION.—
The Administrator shall distribute to States at least 80 percent of the funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986 (referred to in this subsection as the ‘Trust Fund’) for each fiscal year for use in paying the reasonable costs, incurred under cooperative agreements with States, of—

(i) actions taken by a State under section 9003(h)(7)(A);

(ii) necessary administrative expenses directly related to corrective action and compensation programs under subsection (c)(1);

(iii) enforcement by a State or local government of a State program approved under this section or of

State or local requirements regulating underground storage tanks that are similar or identical to this subtitle;

(iv) State or local corrective actions pursuant to regulations promulgated under section 9003(c)(4); or

(v) corrective action and compensation programs under subsection (c)(1) for releases from underground storage tanks regulated under this subtitle if, as determined by the State in accordance with guidelines developed between the Environmental Protection Agency and the States, the financial resources of an owner or operator (including resources provided by programs under subsection (c)(1)) are not adequate to pay for the cost of a corrective action without significantly impairing the ability of the owner or operator to continue in business.

(B) NONPERMITTED USES.—Funds provided by the Administrator under subparagraph (A) shall not be used by a State to provide financial assistance to an owner or operator to meet the requirements respecting underground storage tanks contained in section part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection), except as provided in subparagraph (A)(v), or similar requirements in State programs approved under this section or similar State or local provisions.

(C) TANKS WITHIN TRIBAL JURISDICTION.—The Administrator, in coordination with Indian tribes, shall—

(i) expeditiously develop and implement a strategy to—

(I) take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the exterior boundaries of an Indian reservation or other area within the jurisdiction of an Indian tribe, giving priority to releases that present the greatest threat to human health or the environment; and

(II) implement and enforce requirements regulating underground storage tanks located wholly within the exterior boundaries of an Indian reservation or other areas within the jurisdiction of an Indian tribe; and

(ii) not later than 2 years after the date of enactment of this subsection, and every 2 years thereafter, submit to Congress a report summarizing the status of implementation of the leaking underground storage tank program located wholly within the exterior boundaries of an Indian reservation or other area within the jurisdiction of an Indian tribe.

(2) ALLOCATION.—

(A) PROCESS.—Subject to subparagraph (B), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund

to the State using the allocation process developed by the Administrator for such cooperative agreements.

(B) *REVISIONS TO PROCESS.*—The Administrator may revise the allocation process only after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks and with representatives of owners and operators; and

(ii) taking into consideration, at a minimum—

(I) the total revenue received from each State into the Trust Fund;

(II) the number of confirmed releases from leaking underground storage tanks in each State;

(III) the number of notified petroleum storage tanks in each State;

(IV) the percentage of the population of each State using groundwater for any beneficial purpose;

(V) the evaluation of the program performance of each State;

(VI) the evaluation of the financial needs of each State; and

(VII) the evaluation of the ability of each State to use the funds in any year.

(3) *DISTRIBUTIONS TO STATE AGENCIES.*—

(A) *IN GENERAL.*—Distributions from the Trust Fund under this subsection shall be made directly to the State agency entering into a cooperative agreement or enforcing the State program.

(B) *ADMINISTRATIVE EXPENSES.*—A State agency that receives funds under this subsection shall limit the proportion of those funds that are used to pay administrative expenses to a percentage that the State may establish by law.

(4) *COST RECOVERY PROHIBITION.*—Funds provided to States from the Trust Fund to owners or operators for programs under section 9004(c)(1) for releases from underground storage tanks are not subject to cost recovery by the Administrator under section 9003(h)(6).

(5) *PERMITTED USES.*—In addition to uses authorized by other provisions of this subtitle, the Administrator may use funds appropriated to the Environmental Protection Agency from the Trust Fund for enforcement of any regulation promulgated by the Administrator under this subtitle.

INSPECTIONS, MONITORING, TESTING, AND CORRECTIVE ACTION

SEC. 9005. (a) *FURNISHING INFORMATION.*—For the purposes of developing or assisting in the development of any regulation, conducting any [study taking] study, taking any corrective action, or enforcing the provisions of this subtitle, any owner or operator of an underground storage tank (or any tank subject to study under section 9009 that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or

representative of a State acting pursuant to subsection (h)(7) of section 9003 or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subtitle, such officers, employees, or representatives are authorized—

* * * * *

(b) CONFIDENTIALITY.—(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when [relevant] *relevant* in any proceeding under this Act.

* * * * *

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the [Environmental] *Environmental* Protection Agency).

* * * * *

TITLE 26—UNITED STATES CODE—INTERNAL REVENUE CODE

SUBTITLE I—TRUST FUND CODE

CHAPTER 98—TRUST FUND CODE

SUBCHAPTER A—ESTABLISHMENT OF TRUST FUNDS

§ 9508. Leaking Underground Storage Tank Trust Fund.

(a) CREATION OF TRUST FUND.—

There is established in the Treasury of the United States a trust fund to be known as the “Leaking Underground Storage Tank Trust Fund”, consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) TRANSFERS TO TRUST FUND.—

There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels), (2) taxes received in the Treasury under section 4081 (relating to tax on gasoline and diesel fuel) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, (3) taxes received in the Treasury under section 4091 (relating to tax on aviation fuel) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, (4) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and (5) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act. For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat.

(c) EXPENDITURES.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures [to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.] *to carry out—*

(A) *section 9003(h) of the Solid Waste Disposal Act (as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986); and*

(B) *section 9004(f) of the Solid Waste Disposal Act (as in effect on the date of enactment of the Leaking Underground Storage Tank Trust Fund Amendments Act of 1998).*

(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

(i) amounts paid under—(I) section 6420 (relating to amounts paid in respect of gasoline used on farms), (II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and (III) section 6427 (relating to fuels not used for taxable purposes), and

(ii) credits allowed under section 34, with respect to the taxes imposed by section 4041(d) or by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such sections).

(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in

amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

